INFORMATION LETTER

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SENATE PASSES LEA BILL

Amends the Provision Regarding Administrative Postponement of Enforcement

The Lea bill, providing for a six months' statutory postponement of labeling provisions of the Federal Food, Drug, and Cosmetic Act, was passed on May 4 with an amendment reported by the Senate Commerce Committee making further postponement until July 1, 1940, a "matter of right" upon showing by an applicant in formal affidavit before December 1, 1939, that compliance with labeling provisions by January 1, 1940, would be unduly burdensome and that the public interest is being adequately served.

The bill was returned to the House on Friday where Representative Lea requested that a conference committee be appointed for the adjustment of the differences between the House and Senate provisions.

As passed by the House the bill would extend until January 1, 1940, the effective date of a number of the informative labeling sections of the Act and would place in the Secretary of Agriculture discretionary authority to further extend the effective date until July 1, 1940, "to the extent that the operation of such provisions would be unduly burdensome by reason of the cost of compliance therewith, but only insofar as such postponement will not prevent the public interest being adequately served." The requirements that would be postponed were outlined in the INFORMATION LETTER of April 22.

The amendment added by the Senate Committee provides, "that persons who not later than December 1, 1939, notify the Secretary by affidavit, setting forth the facts, that compliance on January 1, 1940, with the labeling provisions enumerated in this subsection would be unduly burdensome and that the public interest is being adequately served, shall, as a matter of right, be exempted from compliance therewith until July 1, 1940."

No Action Taken on Wage-Hour Bill

No action was taken on wage and hour legislation during the past week. Present indications are that the Norton bill will be called up on Monday, May 15, on a motion to suspend the House rules and pass the bill. Such a motion, to be sustained, requires a two-thirds majority and may be offered only on the first and third Mondays of each month.

At his press conference on Thursday, Administrator Andrews expressed dissatisfaction with the wording "immediately off the farm," contained in the provision of the Norton bill, exempting from the wage and hour limitations employees engaged in cleaning, packing, grading, or preparing fresh fruits and fresh vegetables. The administrator stated that the language would require a definition by the administrator of the phrase "immediately off the farm." The text of the amendment was noted in last week's INFORMATION LETTER.

DETERMINATION OF HOURS

Interpretative Bulletin Issued by Wage and Hour Division of Department of Labor

The determination of hours for which employees are entitled to compensation under the Fair Labor Standards Act is the subject of interpretative Bulletin No. 13, issued on May 3 by the Wage and Hour Division. The text of the bulletin follows:

GENERAL

1. The accurate determination of what constitutes hours worked is essential in order to establish whether the minimum wage and maximum hours requirements of Sections 6 and 7 of the Act have been satisfied. This bulletin is intended to indicate the course which the Administrator will follow with respect to the determination of employees' hours of work in the performance of his administrative duties under the Act, unless he is directed otherwise by the authoritative rulings of the courts or unless he shall subsequently decide that his interpretation is incorrect. The manner of computing minimum wages and overtime compensation which is discussed in Interpretative Bulletin No. 4 is not within the scope of this bulletin.

2. The Act contains no express guide as to the manner of computing hours of work and reasonable rules must be adopted for purposes of enforcement of the wage and hour standards. As a general rule, hours worked will include (1) all time during which an employee is required to be on duty or to be on the employer's premises or to be at a prescribed workplace, and (2) all time during which an employee is suffered or permitted to work whether or not he is required to do so. In the large majority of cases, the determination of an employee's working hours will be easily calculable under this formula and will include, in the ordinary case, all hours from the beginning of the workday to the end with the exception of period when the employee is relieved of all duties for the purpose of eating meals. (No opinion can be expressed at this time as to certain cases—*e.g.*, employees engaged in mining or in working under high pressure—where by custom or agreement time spent eating meals is paid for as hours worked.) The following specific problems with respect to the determination of hours worked which have been presented for our consideration are not sufficiently answered by this formula, however, and more detailed discussions of these problems are, therefore, set out in the following paragraphs.

TIME CLOCKS

3. Neither the statute nor Regulations, Part 516 (Requirements for Keeping Records) require that time clocks be used or specify the manner in which an employer has to keep a record of the number of hours worked by his employees. Time clocks where used will be an appropriate basis for recording hours worked only when they accurately reflect the period worked by the employee. Whether or not time clocks accurately reflect the period worked by the employee is to be determined by the formula in the preceding paragraph. It should be noted also that if the employer requires

the employees to punch a time clock and the employee is required to be present for a considerable period of time before doing so, such time will be considered hours worked.

WAITING TIME AND EMPLOYEES SUBJECT TO CALL

4. Many inquiries have been received with respect to period of inactivity due to the breakdown of machinery and time spent in waiting for materials to be furnished or waiting for the loading or unloading of railroad cars or other vehicles of transportation. Generally, the time during which an employee is inactive by reason of interruptions in his work beyond his control should be included in computing hours worked either if the imminence of the resumption of work requires the employee's presence at the place of employment *or* if the interval is too brief to be utilized effectively in the employee's own interest. This result would not be affected by the fact that the employer tells his employees that they are free to leave the premises. Hours worked are not limited to the time spent in active labor but include time given by the employee to the employer even though part of the time may be spent in idleness.

5. Many inquiries have likewise been received regarding employments, the very nature of which involve periods of inactivity for varying lengths of time. Ordinarily such periods of inactivity during which employees are on duty should be considered hours worked. Thus, for example, messenger boys who sit around in the office and wait for messages to be routed out should be considered as working not only when they are actually delivering messages but also while waiting for such messages to be assigned. Similarly, a chauffeur who is required to drive officials of a company engaged in the production of goods for commerce should be considered as working not only when he is actually driving such officials but also during the time he is obliged to hold himself in readiness to drive. In these cases the employee engages in active work intermittently, but his time is not his own while he remains conveniently available to carry out the instructions of his employer.

6. In a few occupations periods of inactivity need not be considered as hours worked even though the employee is subject to call. The answer will generally depend upon the degree to which the employee is free to engage in personal activities during periods of idleness when he is subject to call and the number of consecutive hours that the employee is subject to call without being required to perform active work—i. e., the frequency with which the employee is called upon to engage in work. In these cases, the nature of the employee's work involves long periods of inactivity which the employee may use for uninterrupted sleep, to conduct personal business affairs, to carry on a normal routine of living, etc. A good example of this is the employee of a small telephone exchange operating a switchboard located in the employee's house. During the night no one is in direct attendance at the switchboard and an alarm bell awakens the operator if a subscriber wishes to make a telephone call. The operator has her bed alongside the switchboard and is able to get several hours of uninterrupted sleep every night, as experience over a considerable period of time may often demonstrate. Thus, if, over a period of several months a telephone operator has been called upon to answer only a few calls between the hours of twelve and five in the morning, a segregation of such hours from hours worked will probably be justified.

7. In some cases employees are engaged in active work for part of the day but because of the nature of the job are also required to be on call for 24 hours a day. Thus, for example, a pumper of a stripper well often resides on the premises of his employer. The pumper engages in oiling the pump each day and doing any other necessary work around the well. In the event that the pump stops (at any time during the day or night) the pumper must start it up again. Similarly, caretakers, custodians or watchmen of lumber camps during the off season when the camp is closed, live on the premises of the employer, have a regular routine of duty but are subject to call at any time in the event of an emergency. The fact that the employee makes his home at his employer's place of business in these cases does not mean that the employee is necessarily working 24 hours a day. In the ordinary course of events the employee has a normal night's sleep, has ample time in which to eat his meals and has a certain amount of time for relaxation and entirely private pursuits. In some cases the employee may be free to come and go during certain periods. Thus, here again the facts may justify the conclusion that the employee is not working at all times during which he is subject to call in the event of an emergency, and a reasonable computation of working hours in this situation will be accepted by the Division.

8. In some cases employees may be subject to call after the completion of their regular working day; employees may be called upon after regular working hours to furnish emergency service to customers. If the employee is required to remain on call in or about the place of business of the company, the time spent should be considered hours worked. If, on the other hand, the employee is merely required to leave word where he can be reached in the event of a call and is not tied down to any particular place, such time need not ordinarily be considered hours worked. The employee, however, should be considered as working at any time during which he is actually making a call and his hours worked would include all time traveling to and from such a call.

TRAVEL TIME

9. The problem of travel time, in relation to hours worked, arises in a great variety of situations and no precise mathematical formula will provide the answer in every case. The question is often one of degree; if the time spent by an employee in traveling is reasonably to be described as "all in a day's work," such time should be considered hours worked under the Act.

10. As a general rule it may be stated that an employer should treat time spent by an employee during regular working hours in traveling pursuant to the employer's instructions as hours worked. If an employer requests his employee to do a job during regular working hours which requires the employee to leave the place of business, the traveling time of the employee should be included in hours worked and this is true whether or not the particular job is within the employee's regular duties.

11. In many cases travel time outside of regular working hours is considered "part of the day's work" and, accordingly, should be treated as hours worked. Thus, an employee whose normal working day extends from 8:00 A. M. to 5:00 P. M. may be requested by his employer at 5:00 P. M. to make one more outside call which involves two hours of traveling time (to get to the place where the work is to be performed and report back to the office) and active labor of one hour. In such case the employer may not disregard the travel time in computing the number of hours worked by the particular employee; the employee's working day would extend from 8:00 A. M. to 8:00 P. M. In this case the employee engages in active labor for his employer after the close of his regular working day and prior to the commencement of his next regular working day and his activities between 5:00 P. M. and 8:00 P. M. are, under the circumstances, reasonably to be considered as a continuation or

extension of his normal working day. The same results, of course, would be reached if the employer requested his employee to report for work two hours earlier in the morning in order to make the one extra call.

12. If a crew of workers is required to report for work at a designated place at a specified hour and all the employees are then driven to the place where they are to perform work, the time spent in riding to such place should be considered hours worked. Similarly, the time spent returning from the place at the close of the day's work should be considered hours worked. In some cases, however, the employer requests his employees to report for work at a specified hour at the place where the work is to be performed instead of at the employer's place of business. In these cases the employee's working time may be considered to begin at the time he reports for work, unless the traveling time required in order to reach the place where the productive work is to be performed is unreasonably disproportionate to the normal traveling time required in reporting for work at the headquarters of the employer. No precise formula will solve this type of situation. What is unreasonably disproportionate depends upon the facts in the particular case and reasonable standards agreed upon between employer and employee will be accepted for purposes of the Act.

13. In some cases an employee is required to travel continuously for more than a full working day during which time the employee is not engaged in actual productive work for his employer. For example, an employee whose regular working hours extend from 8:00 A. M. to 5:00 P. M. may be required to spend two or three days and nights of continuous travel to reach a place where he is to perform assigned work. In such case as indicated generally in paragraph 10, time spent traveling during the regular working hours should be considered hours worked. Travel time outside of regular working hours need not ordinarily be considered hours worked. If, however, the employee is required to travel on Saturdays, Sundays, and holidays, he should be considered as working on those days for the number of traveling hours between his established starting and stopping time on other days of the week. In determining whether the foregoing is applicable, factors such as the length of time required to reach the place where the assigned work is to be performed, whether the employee is given adequate time for sleeping and relaxation, the time that the employee is required to report for actual productive labor, etc., are very important.

14. Inquiries have been received with respect to employees who are required to travel continuously for several days and who perform active labor while traveling. Thus, for example, when cattle or poultry, etc., are sent to market by rail, an employee of the shipper is required to travel on the train in order to water and feed the stock en route. In other cases an employer who ships machinery by train to a distant customer requires an employee to oil the machinery en route and otherwise to see that it arrives in perfect condition. The employee generally rides in the caboose with the train crew. In each of the foregoing cases, the employees are subject to call for 24 hours a day, but time required for active work by such employees would ordinarily be much less. The employee generally has a substantial amount of time for sleeping, eating, relaxation, etc. (The question is obviously one of degree. No opinion is expressed in the case of the relief truck driver. As to the exemption provided by Section 13(b)(1) from the hours provision of the Act, see Interpretative Bulletin No. 9.) No precise formula will decide this type of case and any reasonable agreement entered into between the parties or established by custom and usage which takes into account the amount of time required for active labor by the employee and the fact that the employee is subject to call for 24 hours a day, will be respected by this Division in its enforcement policy.

MEETINGS AND LECTURES

15. Time spent in attending meetings and lectures sponsored by the employer (whether or not attendance is voluntary) should be considered time worked if such meetings and lectures are related to the employee's work, as, for example, meetings and lectures for the purpose of teaching the employee the use of new types of machinery on his job, mine rescue, fire prevention and control. In addition, time spent in attending any meetings and lectures should be considered hours worked if attendance is not wholly voluntary.

EMPLOYEES HAVING MORE THAN ONE JOB

16. Many inquiries have been received with respect to employees who work for two or more companies. Thus, for example, Company A and Company B may arrange to employ a common watchman, the employee having the duty of watching the property of both companies concurrently for a specified number of hours each night. In this case A and B are not each required to pay the minimum rate required under the statute for all hours worked by the watchman (i. e., 25 cents an hour each) but A and B should be considered as a joint employer for purposes of the Act.

17. In some cases, however, an employee may work 40 hours for Company A and 15 additional hours during the same week on a different job for Company B. In this case it would seem that if A and B are acting entirely independently of each other with respect to the employment of the particular employee, both A and B, in ascertaining their obligations under the Act, would be privileged to disregard all work performed by the employee for the other company. If, on the other hand, the employment by A is not completely disassociated from the employment by B, the entire employment of the employee for both A and B should be considered as a whole for the purposes of the statute. Whether the employment by A and B are completely disassociated depends, of course, upon the facts in the particular case. This Division will scrutinize all cases involving more than one employment and, at least in the following situations, an employer will be considered as acting in the interest of another employer in relation to an employee: if the employers make an arrangement for the interchange of employees or if one company controls, is controlled by, or is under common control with, directly or indirectly, the other company.

"FOOD-STAMP" PRODUCTS DESIGNATED

Dayton Selected as Second City for Testing New Surplus Distribution Plan

Dayton, Ohio, was designated by the Secretary of Agriculture on May 5 as the second city in which the "food-stamp" method of distributing surpluses through the normal channels of trade will be tested. On May 4, nine products were designated by the Secretary as surplus commodities. These foods, which may be purchased with stamps under the plan are: butter, shell eggs, dry-edible beans, dried prunes, oranges, grapefruit, wheat flour, whole-wheat flour, and corn meal.

As the Secretary determines, during the growing season, that surpluses exist for fresh vegetables, these will be added to the list.

The "food-stamp" distribution plan is scheduled to go into operation on May 15 in Rochester, N. Y., the first of the

half-dozen cities expected to be used as test cities. The third city is understood to be Birmingham, Ala., or some other Southern city, but the selection has not yet been officially announced.

Under the surplus-distribution program, the Secretary of Agriculture determines from time to time those commodities that are being produced in surplus. With respect to these products, the Federal Surplus Commodities Corporation has authority to (1) determine that the surpluses exist only regionally, and (2) take off the list any commodities when the Corporation finds that surpluses no longer exist.

Wisconsin Law Safeguards Payments to Growers

The Wisconsin legislature has passed a bill amending the State's cannery licensing law so as to safeguard payments to growers. Renewal of licenses are made contingent on payment of growers in full, or the posting of a surety bond to make payment within a reasonable time. The text of the amendment, as passed by the legislature, follows:

"No permit or license to operate a cannery of farm produce shall be issued or granted unless the applicant shall satisfy the department of his financial responsibility to meet obligations to growers. No such license shall be renewed unless the licensee shall certify that all growers who have supplied farm produce to the licensee have been paid therefor in full for obligations incurred after May 1, 1939. Growers shall not be deemed to have been paid in full unless they shall have been paid in cash the fair market value of the produce. Provided, however, that the department may renew the license of a licensee whose growers have not been paid in full for obligations incurred after May 1, 1939, if the licensee shall post with the department a surety bond, in such form and amount as the department may prescribe after May 1, 1939, for obligations incurred thereafter, conditioned upon payment in full to such growers within such length of time as the department shall determine to be reasonable. The department may determine an applicant to be a successor to a licensee if a substantial portion of the ownership, management or control of the applicant's business is vested in the same person or persons who owned, managed or controlled a substantial portion of the business of such licensee. No permit or license to operate a cannery of farm produce shall be issued or granted to such successor except upon the conditions that would be applicable to the renewal of the predecessor's license."

House Committee Reports Seed Bill Favorably

The House Committee on Agriculture reported favorably May 3 the Coffee seed bill requiring informative labeling of agricultural and vegetable seeds, regulating the importation of seeds, and placing in the Secretary of Agriculture authority to make rules pertaining to seed standards and prohibiting the adulteration of seeds. The bill includes provisions for the seizure of seeds sold, delivered, or transported in violation of its requirements.

Florida Citrus-Price Law Held Unconstitutional

A three-judge Federal Court on May 4 held that the Florida law, under which grapefruit prices were pegged to guarantee growers 32 cents a box, is unconstitutional. The decision by the three Federal judges sustains an order issued on April 28 which restrained the commissioner of agriculture and associates from interfering with the free purchase of citrus fruits.

The suit was brought by ten canning concerns to test the price-fixing law.

Barkley Water-Pollution Bill Passed

The Barkley water-pollution bill (S. 685) passed the Senate on May 1 after the more stringent Clark proposal, which was offered as a substitute, had been defeated. Senator Barkley's bill would establish a Division of Water Pollution Control in the Public Health Service to prepare, in cooperation with the War Department and State agencies, comprehensive plans for prevention of pollution of navigable waters and their tributaries. The Division would be authorized to encourage State pollution-control activities, uniform laws, and interstate compacts. The bill provides for loans and grants to the States and to individuals for the construction of treatment works.

The Clark bill would have empowered the Army Engineer Corps to classify the navigable waters of the United States into sanitary districts and would have authorized the fixing of standards of purity and minimum requirements for the treatment of polluting material.

Will Investigate Resale-Price Maintenance

An investigation of resale-price maintenance as practiced under the various State "Fair Trade" laws, is now being conducted and will be continued in the next fiscal year, the Federal Trade Commission announced May 5.

The inquiry is being conducted by the Commission's regular economic staff pursuant to a Commission resolution which calls for an investigation of the extent, effects, and methods of the development of resale-price maintenance.

It is planned that the investigation shall embrace among other things (1) a study of the prices charged by manufacturers and retail dealers for commodities under price contract as compared with such prices for similar competing commodities not under price contract, (2) a study of the quality received by the consumer in his purchase both of commodities under price contract and of similar competing commodities not under price contract, and (3) methods employed in obtaining the support of industry and the retail and wholesale trades for resale-price maintenance and in the practical establishment thereof.

Order Issued in Quality Bakers Case

The Federal Trade Commission announced May 4 that Quality Bakers of America, a trade association composed of approximately 70 wholesale baking concerns located in various sections of the United States, had been served with an order prohibiting violation of the brokerage section of the Robinson-Patman Act. Other respondents include Quality Bakers of America, Inc., a service and purchasing agency, the stock of which is owned by the association members, six baking companies named as being representative of the association membership, the association officers and executive

committee members, Pillsbury Flour Mills Company, Consolidated Flour Mills Company, and The Kansas Milling Company.

The findings upon which the order was issued state that the baking companies, composing the membership of the association, Quality Bakers of America, through stock ownership controlled the service company, Quality Bakers of America, Inc., and used it as their purchasing agent in buying bakers' supplies, equipment and machinery.

On these purchases the service company received and accepted from more than 200 manufacturers and other sellers brokerage fees in connection with which neither the service company nor the member companies making the purchases rendered any services to the sellers.

The brokerage fees were turned over by the service company to the member companies in the form either of money and credits or benefits and services such as services relating to purchasing, production, engineering, accounting, sales promotion, advertising, planning, publications and management assistance. This was accomplished under an agreement that the members pay dues to the service company and that the brokerage fees allowed by the sellers and collected by the service company be applied one-half to the credit of dues for the member on whose business a brokerage fee originated and one-half for services to all association members. Statistics based on 1936 purchases show that the service company collected $181,528 in brokerage fees that year of which $90,760 was credited to the respective accounts of member companies.

Under the Commission's order, Quality Bakers of America, Quality Bakers of America, Inc., and their officers, agents and employees, in connection with the purchase of commodities by any member or stockholder, respectively, of the two organizations, were directed to cease and desist from receiving or accepting brokerage fees or commissions and from paying or delivering such fees to such members or stockholders, either directly in the form of money or credits, or indirectly in the form of services, facilities, property or benefits furnished by means of the expenditure of such fees or commissions.

New Wage-Hour Division General Counsel

George A. McNulty will be appointed general counsel of the Wage and Hour Division of the Department of Labor, to succeed Calvert Magruder, after Mr. Magruder's nomination as judge of the United States Circuit Court of Appeals for the First (New England) Circuit, is confirmed by the Senate, Administrator Elmer F. Andrews announced Tuesday.

Mr. McNulty, who is at present associate general counsel of the Division, would then be succeeded in that post by Rufus G. Poole, who is now assistant general counsel, Mr. Andrews said.

Texas and Mississippi Tomato Agreements

Tentative approval of two separate marketing agreement programs for the handling of tomatoes grown in all producing areas of Mississippi and in designated Texas counties, was announced May 1 by the Department of Agriculture. Referenda are being held this week and next in each State to determine whether growers favor the issuance of orders that would make the terms of the agreements applicable to all handlers. The separate agreements are being submitted to handlers for their signatures.

INTERPRETATIVE BULLETIN ON FISHERIES

Wage-Hour Division Issues Ruling on Seafood Industry Employees Exempt from Act

Two interpretative bulletins, intended to clarify the exemptions applicable to the seafood and fishery industry and to seamen under the Fair Labor Standards Act, were issued April 29 by Administrator Elmer F. Andrews of the Wage and Hour Division.

The seafood and fishery industry exemption was held applicable to employees in that industry whose work is dependent upon and affected to a considerable extent by natural factors; as, for example, the processing of fish by-products into fish meal. No exemption is provided for employees engaged in the manufacture of pearl buttons, knife handles, and crushed shell and grit. Office employees, watchmen, and cooks ordinarily do not come under this exemption, although some of these employees may be engaged in specific duties which would bring them within the exemption, the bulletin stated.

The "seaman bulletin" interpreted the Act as exempting the crews of vessels operating on the inland waterways, as well as on the high seas. The exemption extends to members of the crew such as sailors, engineers, radio operators, firemen, pursers, surgeons, cooks, and stewards. The exemption, however, was construed as not being applicable to such employees as stevedores, longshoremen, lighter captains, barge workers (except crews of seagoing barges) and employees engaged in dredging operations.

The complete text of the interpretative bulletin on the seafood and fishery industry follows:

1. Section 13(a)(5) of the Act provides an exemption from the minimum wage provisions of Section 6 and the maximum hours provisions of Section 7, as follows:

> "The provisions of sections 6 and 7 shall not apply with respect to . . . any employee employed in the catching, taking, harvesting, cultivating, or farming of any kind of fish, shell-fish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including the going to and returning from work and including employment in the loading, unloading, or packing of such products for shipment or in propagating, processing, marketing, freezing, canning, curing, storing, or distributing the above products or byproducts thereof."

2. The provisions of Sections 6 and 7 of the Act apply only to "employees . . . engaged in (interstate) commerce or in the production of goods for (interstate) commerce." See Interpretative Bulletins Nos. 1 and 5. This bulletin will not deal with the question as to which employees in the seafood and fishery industry are so engaged, but will be directed solely to the scope of the exemption in Section 13(a)(5). This bulletin is intended to indicate the construction of this section which will guide the Administrator in the performance of his administrative duties unless directed otherwise by the authoritative ruling of the courts, or unless he shall subsequently decide that his prior interpretation is incorrect.

3. The legislative history shows clearly that the exemption provided by Section 13(a)(5) was intended to do for the seafood and fishery industry that which was done in other sections of the Act for agriculture. To this end, this section provides an exemption for employees engaged in the cultivating and catching of fish, including, in our opinion, the placing and taking up of the nets, and for employees engaged in

specifically enumerated operations, such as freezing, canning or curing, upon the fish when cultivated or caught.

4. It seems clear that the Congress, through the use of the language, "processing . . . (fish) products or byproducts thereof," intended to exempt those operations connected with the fishing industry which are closely connected with the physical catching of the fish, and which are performed incidental to, and immediately following, the catch. The position of the word "processing" in this section ("propagating, processing, marketing, freezing, canning, curing, storing, or distributing") supports this construction of the statute. Examples of the operations which, in our opinion, were contemplated by the words "processing . . . (fish) products", are the cleaning of fish and other treatment of them prior to marketing them. Likewise the processing of fish byproducts into dried scrap and fish meal, would appear to be within the scope of the exemption because their preparation is closely connected with the physical catching of the fish and is affected by natural factors.

5. It seems equally clear from the legislative history of the exemption that it was not designed to exempt employees engaged in operations which are not affected to a considerable extent by natural factors. Amendments proposed during the consideration of the bill to exempt the manufacturing of fishery products were defeated, and it is clear that the Congress, by the use of the language "processing . . . the above products or byproducts thereof" did not intend to exempt manufacturing operations uncontrolled by natural factors and typical of industries clearly covered by the Act. Employees engaged in manufacturing the following products are engaged in essentially manufacturing operations not affected by natural factors and, therefore, are not within the scope of the exemption: crushed shell and grit and shell lime (made from crushed oyster, mussel and clam-shell products), pearl buttons and novelties, such as knife handles, etc. (made from mussel-shells and marine shells), liquid glue, isinglass and pearl essence.

6. "Office employees" would not ordinarily come within the exemption provided by Section 13(a) (5) because they do not engage in operations described in this section. Of course, some office employees may be engaged in such operations. Thus, clerks in the shipping department of an employer engaged in the catching or taking of fish, who direct the shipment thereof, would seem to be engaged in "marketing" or "distributing" within the meaning of these words as used in Section 13(a)(5). Other office employees of this same employer, who cannot be said to be engaged in "marketing", "distributing" or other operations enumerated in Section 13(a)(5), would not be exempt. Similarly, other employees of employers in the seafood and fishery industry, such as cooks and watchmen, would not be exempt because they do not engage in operations enumerated in the section.

7. Section 13(a)(3) which provides an exemption from both the wage and hour provisions for "any employee employed as a seaman" is discussed in Interpretative Bulletin No. 11.

Quick-Frozen Foods in United Kingdom

The formation of the Birds Eye Foods, Ltd., to place products frozen by the quick-freezing process on the retail market in the United Kingdom, was announced the last of March, according to the American commercial attache at London. Messrs. Chivers, who have distributed frosted fruits and vegetables under their own name, will act as one of the producers for the new company.

QUARTERLY STOCK SURVEY

Figures on Selected Vegetables, Fruits, and Fish Issued by Census Bureau

Distributors' stocks—based upon a representative sample—of canned peas, corn, tomatoes and beans were lower on April 1 than on January 1 of this year, according to the Bureau of the Census. In terms of number of cases, all sizes combined, distributors' stocks of peas were off 2.3 per cent from January 1; corn, 10.0 per cent; tomatoes, 8.7 per cent; and beans were off by 11.5 per cent. Stocks of corn and tomatoes on April 1 were also lower than a year ago by 6.4 per cent and 8.8 per cent, respectively. Inventories of peas and beans, however, were higher than a year ago by 16.1 per cent and 11.2 per cent.

Canners' stocks of similar items, based upon information compiled by the National Canners Association, were generally higher than a year ago but substantially less than on January 1 of this year.

Distributors' stocks of canned peaches and pears were higher on April 1 than a year ago by 3.2 per cent and 6.4 per cent, respectively, but were somewhat lower for both classes than for January 1 of this year. Canners' inventories of these items were substantially less than a year ago as well as when April is compared with January of this year. These figures are based upon a representative sample of distributors and canners reporting their inventories to the Bureau of the Census for each of the three dates: April 1, 1939; January 1, 1939; and April 1, 1938.

Statistics are also presented in this report for canned salmon, tuna fish, and sardines. Distributors' stocks, representative sample, of salmon (reds, pinks, and other) were somewhat larger on April 1 than on January 1 of this year, and also larger than as of April 1 of last year. Inventories of tuna held by distributors were 7.4 per cent larger than on January 1 and 27.5 per cent above last year. Similarly, stocks of California and imported sardines were higher in April than in January but Maine sardines held by distributors were 36.9 per cent lower.

Data on canners' inventories of Alaska reds, pinks, and other salmon, compiled by the Association of Pacific Fisheries, are presented for April 1, February 1, and January 1 of 1939 and for February 1 and January 1 of 1938.

The information presented in the following tables, except as noted, was compiled from reports for identical firms.

STOCKS OF SELECTED VEGETABLES

Commodity	April 1, 1939	January 1, 1939	April 1, 1938
DISTRIBUTORS[a]	*Cases*	*Cases*	*Cases*
Peas	1,288,350	1,319,327	1,109,907
Corn	1,305,112	1,450,709	1,395,095
Tomatoes	942,376	1,031,755	1,033,105
Green and wax beans	392,174	668,986	532,337
CANNERS[b]			
Peas	10,433,812	16,372,154	7,077,430
Corn	12,676,255	17,561,019	9,155,560
Tomatoes	5,952,983	10,119,186	5,464,583
Green and wax beans	3,534,947	5,384,126	1,885,542

[a] Compiled by Census Bureau; based on reports from the same firms for each date.

[b] Compiled by National Canners Association; figures cover total industry except for tomatoes, which exclude California.

REPRESENTATIVE STOCKS OF PEACHES AND PEARS[a]

DISTRIBUTORS	April 1, 1939	January 1, 1939	April 1, 1938
	Cases	*Cases*	*Cases*
Peaches	695,191	833,715	673,774
Pears	291,922	372,590	274,489
CANNERS			
Peaches	2,346,313	3,736,636	4,880,545
Pears	1,087,862	2,129,091	1,527,625

[a] Compiled by Census Bureau; based on reports from the same firms for each date.

REPRESENTATIVE STOCKS OF SELECTED FISH

DISTRIBUTORS[a]	April 1, 1939	January 1, 1939	April 1, 1938
	Cases	*Cases*	*Cases*
Salmon, total	318,634	251,041	222,847
Reds	105,837	86,893	74,032
Pinks	149,055	115,580	96,452
Other	63,742	48,568	52,363
Tuna	130,632	121,653	102,429
Sardines, total	121,010	93,802	130,578
California	72,436	39,978	64,877
Maine	14,965	23,721	31,819
Imported	33,609	30,103	33,882
CANNERS[b]			
Salmon, total	1,324,361	2,769,415	(c)
Alaska Reds	813,808	1,271,974	(c)
Pinks	245,345	1,028,526	(c)
Other	265,308	468,915	(c)

[a] Compiled by Census Bureau; based on reports from same firms for each date.

[b] Compiled by Association of Pacific Fisheries; represent practically entire industry.

[c] Not available.

Yellows Resistant Cabbage for New York State

In order to secure information on resistant varieties of cabbage which are best for planting under New York State conditions, studies were made by the New York Agricultural Experiment Station at Geneva in 1937 and 1938. A report of these studies is contained in the issue of *Farm Research* for April, 1939, published by the Station. Information is included on average weight per head, in pounds, and tons per acre on two different soil types. A comparison of resistant and non-resistant domestic varieties was also made, as well as one of resistant and non-resistant Danish varieties.

March Canned Fruit Arrivals in United Kingdom

Arrivals of canned fruit, including fruit preserved both with and without sugar, at the principal ports of the United Kingdom, showed a sharp decline during the four weeks ended March 25, and were 31 per cent smaller than in the corresponding period of 1938, according to the Imperial Economic Committee at London.

Receipts of grapefruit were much heavier than those of a year ago, but most of the other important varieties were entered in smaller quantities. The declines were particularly marked in the case of pears and oranges.

American Weekly Article Features Canned Foods

A full-page, illustrated article featuring "scientifically packed foods" appeared in the American weekly on April 30. The article pointed out the value of canning in providing quantities of food for later use, in contrast to years past when famines prevailed following years of poor harvests. In addition, the article stated, "By virtue of widespread canning facilities all over the world, it now is possible for everyone to eat a far more varied diet than human beings of any previous century could get. Not only is appetite served by this, but average supplies of vitamins, necessary mineral salts and other important food elements are greatly increased."

Illustrations of canning factory equipment were furnished through the courtesy of the American Can Company.

Study of Mineral Content of Fishery Products

A study pertaining to the mineral content of American fishery products, titled "The Mineral Content of Edible Portions of Some American Fishery Products," has been published by the Bureau of Fisheries. Copies may be had for five cents upon application to the Superintendent of Documents, Government Printing Office, Washington, D. C.

The study shows that fishery products are excellent sources of magnesium, phosphorus, iron, copper, and iodine.

UNSOLD STOCKS OF CANNED SALMON ON APRIL 30

Unsold stocks of canned salmon on April 30, 1939, totaled 1,255,289 actual cases, compared with 1,324,362 cases on March 31, 1939, according to statistics compiled by the Association of Pacific Fisheries. These figures represent the combined reports of 79 companies, which packed 98 per cent of the 1938 pack. No reports were issued for March, April, and May, 1938, so the usual comparison with the corresponding month of 1938 cannot be given. The following table provides statistics of canned salmon stocks for April and March, 1939, by grades or varieties and by can sizes:

GRADES OR VARIETIES	Talls (1 Pound)	Flats (1 Pound)	Halves (8 Dozen)	Total April 30, 1939	Total March 31, 1939
Chinooks or Kings:	*Cases*	*Cases*	*Cases*	*Cases*	*Cases*
Fancy Red	8,268	12,018	21,909	42,195	45,978
Standard	2,070	1,984	6,885	10,939	12,583
Pale	1,160	157	147	1,464	1,472
White	.....	70	357	427	347
Puget Sound Sockeyes	32	3,687	59,062	62,781	67,965
Alaska Reds	759,242	24,008	1,545	784,795	813,809
Cohoes, Silvers, Medium Reds	63,206	4,955	21,632	89,793	86,277
Pinks	208,419	6,734	155	215,308	245,345
Chums	41,278	21	4,110	45,409	48,266
Bluebacks	.....	.....	1,269	1,269	1,296
Steelheads	.....	484	425	909	1,024
Totals	1,083,675	54,118	117,496	1,255,289	1,324,362

IMPORTS OF SUGAR FOR CONSUMPTION

March Statistics on Receipts by Countries of Origin and Ports of Entry Reported

Total receipts of sugar for consumption in the United States during March, 1939, amounted to 961,479,492 pounds, compared with 575,045,490 pounds during February, according to Department of Commerce figures. These totals include all dutiable and free-sugar imports, both raw and refined.

The first table below, compiled from a special report of the Department of Commerce, shows the imports during March of dutiable and free sugar from foreign countries, and shipments of sugar to the United States from non-contiguous territories.

Imports for consumption, as reported in the tables below, include only direct imports for consumption and withdrawals from bonded warehouses. Sugar brought into a United States port during a month in excess of a country's quota, usually is held in bond until a later date when it is released for sale under the quota applying for that month. That portion of the sugar brought into United States ports and stored in bonded warehouses is not included in "imports for consumption" figures until it is released for sale.

Origin	Raw		Refined	
Foreign countries:	Dutiable *Pounds*	Free *Pounds*	Dutiable *Pounds*	Free *Pounds*
Cuba	238,707,826	.....	42,384,940	.....
Haiti	175,300	.....	173,400	.....
Dominican Republic	7,389,600	.....	.....	.....
Mexico	17,229	.....	.....	.....
Guatemala	.....	.....	.....	6,802
Nicaragua	.....	.....	.....	1,016
Peru	5,595,721	.....	.....	.....
Philippine Islands	623,106	208,833,362	8,265,620	.....
China	8,400	.....	.....	.....
United Kingdom	.....	.....	.....	83,205
Total	252,517,182	208,833,362	50,823,960	91,023
U. S. Territories:				
Hawaii	.....	163,749,035	.....	900,000
Puerto Rico	.....	248,142,780	.....	36,422,150
Total receipts	252,517,182	620,725,177	50,823,960	37,413,173

The following table shows imports of dutiable and free sugar during the month of March, 1939, by port of entry:

Port of entry	Raw		Refined	
	Dutiable	Free	Dutiable	Free
Massachusetts	68,080,093	3,044,512	169,740	.....
New York	68,823,477	107,383,514	13,900,000	81,100
Philadelphia	47,582,303	73,765,510	5,750,000	.....
Maryland	49,220,480	.....	4,840,000	.....
Virginia	.....	.....	1,740,000	.....
South Carolina	.....	.....	4,900,000	.....
Georgia	150,683	.....	.....	.....
Florida	.....	.....	4,815,200	.....
Mobile	.....	.....	400,000	.....
New Orleans	8,844,873	24,639,826	5,720,000	.....
Galveston	3,171,900	.....	.....	1,016
El Paso	2,690	.....	.....	.....
Arizona	14,530	.....	.....	.....
Los Angeles	299,900	.....	3,708,020	6,802
San Francisco	5,494,760	.....	.....	2,105
Washington	250,000	.....	4,242,600	.....
Oregon	73,206	.....	225,000	.....
Michigan	.....	.....	150,000	.....
Virgin Islands	506,800	.....	173,400	.....
Hawaii	1,400	.....	.....	.....
Total	252,517,182	208,833,362	50,823,960	91,023

Indexes on Employment and Prices

Indexes for employment, payrolls, and wholesale prices, in the tables below, are the latest available from the Bureau of Labor Statistics. For employment and payrolls, the indexes are based on the average for the years 1923-25, taken as 100 per cent, while for wholesale prices the average for the single year 1926 is taken as 100 per cent.

	Employment			Payrolls		
	March 1939	Feb. 1939	March 1938	March 1939	Feb. 1939	March 1938
All industries	91.3	90.7	87.7	86.8	85.4	77.1
Canning and preserving	77.0	72.2	78.0	73.2	70.2	70.0

	Wholesale Prices					
	Apr. 29, 1939	Apr. 22, 1939	Apr. 15, 1939	Apr. 8, 1939	Apr. 1, 1939	Apr. 23, 1938
All commodities	76.1	76.0	75.8	75.9	76.5	78.6
All foods	68.6	68.7	68.2	68.4	70.5	72.2

Fruit and Vegetable Market Competition

Carlot Shipments as reported by the Bureau of Agricultural Economics, Department of Agriculture

	Week ending—			Season total to—	
Vegetables	April 29, 1938	April 29, 1939	April 22, 1939	April 29, 1938	April 29, 1939
Beans, snap and lima	463	295	219	6,376	5,095
Tomatoes	1,277	1,008	806	13,675	3,085
Green peas	242	250	389	2,120	2,143
Spinach	60	160	222	6,435	5,977
Others:					
Domestic, competing directly	7,733	7,964	5,628	162,073	158,679
Imports compering—					
Directly	13	17	10	769	434
Indirectly	6	10	13	2,356	2,232
Fruits					
Citrus, domestic	1,341	1,629	5,464	44,313	56,459
Imports	0	0	0	107	77
Others, domestic	683	713	701	22,359	21,616

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